

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

STATE OF NEW YORK,

Defendant.
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RAYMOND O'TOOLE et al.,

Plaintiffs,

ANDREW M. CUOMO et al.,

Defendants.
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RESIDENTS AND FAMILIES UNITED TO SAVE
OUR ADULT HOMES et al.,

Plaintiffs,

HOWARD ZUCKER, M.D., et al.,

Defendants.
-----X

NICHOLAS G. GARAUFIS, United States District Judge.

ORDER

13-CV-4165 (NGG) (ST)

13-CV-4166 (NGG) (ST)

16-CV-1683 (NGG) (RER)

On June 15, 2017, the court appointed Katya Jestin of Jenner & Block LLP to serve as a guardian ad litem for the Class Member Plaintiffs.¹ (Order (Dkt. 42)².) Jeffrey J. Sherrin,

¹ The "Class Member Plaintiffs" refer to class members in O'Toole v. Cuomo, No. 13-CV-4166 (NGG) (RML), who are also named plaintiffs in at least one of the Regulations Actions, listed as follows: Residents & Families United to Save Our Homes v. Zucker ("Residents and Families"), No. 16-CV-1683 (NGG) (RER); Doe v. Zucker, Index No. 007079/2016 (N.Y. Sup. Ct. Albany Cty.); Oceanview Home for Adults, Inc. v. Zucker ("Oceanview v. Zucker"), Index No. 006012/2016 (N.Y. Sup. Ct. Albany Cty.); and Hedgewood Home for Adults, LLC v. Zucker, Index No. 052782/2016 (N.Y. Sup. Ct. Dutchess Cty.).

² Unless indicated otherwise, citations to the record refer to documents filed in Case No. 16-CV-1683 (NGG) (RER).

counsel for the Residents Plaintiffs³ in Residents and Families United to Save Our Homes v. Zucker (“Residents and Families”), No. 16-CV-1683 (NGG) (RER), asserts various objections to the court’s appointment of a guardian ad litem.⁴ (See June 26, 2017, Ltr. (Dkt. 45).)

It is hereby ORDERED that the guardian ad litem shall, for the time being, limit her inquiry and report to Walter Roberts, Joseph Simon, Lawrence Wong, and Kenneth Przyjemski’s participation in Residents and Families.⁵ The guardian ad litem need not provide notice to Sherrin or his co-counsel, David T. Luntz, of any interviews of these individuals that she conducts. Moreover, because it is plausible that Sherrin or Luntz’s presence could chill the individuals’ willingness or ability to be forthcoming and honest with the guardian ad litem, neither Sherrin nor Luntz (nor anyone from these attorneys’ firms) shall be present at the guardian ad litem’s interviews of these individuals.

The court will take no action on the guardian ad litem’s report until the parties to the above-captioned cases have had an opportunity to comment on and/or object to the guardian ad litem’s findings.

SO ORDERED.

Dated: Brooklyn, New York
June 10, 2017

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge

³ The Residents Plaintiffs include the following parties: Residents and Families United to Save Our Adult Homes, New York State Health Facilities Association/New York State Center for Assisted Living, Kenneth Przyjemski, Walter Roberts, Hudson View Management Corp., d/b/a Palisade Garden HFA, Belle Harbor Manor, Elm York LLC, Kings Adult Care Center, LLC, Lakeside Manor Home for Adults, Inc., Garden of Eden Home LLC, d/b/a Garden of Eden Home, Mohegan Park Home for Adults, Gloria’s Manor LLC, d/b/a New Gloria’s Manor Home for Adults, New Haven Manor, New Monsey Park Home, New Rochelle Home for Adults, LLC, Parkview HFA, Inc., as assignee of Parkview Home for Adults, Elener Associates, LLC, d/b/a Riverdale Manor Home for Adults, Seaview Manor, LLC, Surfside Manor Home for Adults, LLC, The Eliot Management Group, LLC, d/b/a The Eliot at Erie Station ALP, The Sanford Home, Wavecrest HFA, Inc., d/b/a Wavecrest Home for Adults, and Woodland Village LLC, d/b/a Fawn Ridge Assisted Living. (See 2d Am. Verif. Compl. and Pet. (Dkt. 1-2).)

⁴ Sherrin has provided no legal support for his conclusory objections.

⁵ The court reserves decision as to whether the guardian ad litem shall interview the Class Member Plaintiffs participating in Doe v. Zucker and Oceanview v. Zucker.